

GAHC010087042023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2189/2023

M.J. ENTERPRISE
A PARTNERSHIP FIRM, HAVING ITS OFFICE ADDRESS AT DHUPALIYA
PATH, JYOTIKUCHI TINIALI, GUWAHATI REP. BY ITS ONE OF THE
PARTNER, SRI JITU HANDIQUE, AGED ABOUT 44 YEARS, S/O- LATE
BHARAN HANDIQUE, SKY SCRAPERS RESIDENTIAL COMPLEX, JATIA,
KAHILIPARA ROAD, GUWAHATI, KAMRUP (M), ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY, MINISTRY OF HUMAN RESOURCE
DEVELOPMENT, DEPTT. OF SCHOOL EDUCATION AND LITERACY, 124(C)
WING, SHASTRI BHAWAN, NEW DELHI- 110001

2:THE MISSION DIRECTOR
RASHTRIYA MADHYAMIK SHIKSHA ABHIYAN (RMSA)
ASSAM

3:THE DEPUTY COMMISSIONER
DARRANG
DIST.- DARRANG
ASSAM

4:THE CIRCLE OFFICER-CUM- CONVENOR
SMDC
ADARSHA VIDYALAYA
DALGAON

5:THE PRINCIPAL
ADARSHA VIDYALAYA
DALGAON
VILL- RUHINIKASH
P.O. DALGAON

DIST.- DARRANG
ASSAM
PIN- 784116

6:J.M.K ENTERPRISES
HAVING ITS OFFICE ADDRESS AT KAMAKHYA GATE
GUWAHATI
REP. BY ITS PROPRIETOR SRI BIKASH SARMA
S/O- SRI BINOD DUTTA SARMA
RESIDENT OF VILL- BARPARA
P.O. AND P.S. BOKO
DIST.- KAMRUP
ASSA

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/8353/2022

BIKASH SARMA
S/O- SRI. BINOD DUTTA SARMA
R/O- VILL- BARPARA
P.O. BOKO
P.S. BOKO
DIST.- KAMRUP
ASSAM
PROPRIETOR OF J.M.K. ENTERPRISE
HAVING OFFICE AT KAMAKHYA GATE
GUWAHATI

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY THE SECY.
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
DEPART OF SCHOOL EDUCATION AND LITERACY
124(C) WING
SHASTRI BHAWAN
NEW DELHI- 110001

2:MISSION DIRECTOR
RASHTRIYA MADHYAMIK SHIKSHA ABHIYAN

ASSAM
3:DY. COMMISSIONER
DARRANG
DIST.- DARRANG
ASSAM
4:CIRCLE OFFICER CUM CONVENOR
SMDC
ADARSHA VIDYALAYA
DALGAON
5:THE PRINCIPAL
ADARSHA VIDYALAYA
DALGAON
VILL- RUHINIKASH
P.O. DALGAON
DIST.- DARRANG
ASSAM
PIN- 784116

Advocate for : MR. S K GOSWAMI
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20.07.2023

In connection with W.P.(C) No. 2189/2023, heard Mr. U.K. Nair, learned senior counsel, assisted by Mr. B. Kaushik, learned counsel for the petitioner. Also heard Mr. H. Gupta, learned CGC appearing for respondent no.1, Mr. P. Nayak, learned standing counsel for RMSA, representing respondent no.2, Ms. M. Barman, learned Govt. Advocate, representing respondent nos. 3 and 4, Mr. S. Borthakur, learned counsel for respondent no.5, and Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. S.K. Goswami, learned counsel for respondent no. 6.

2) In connection with W.P.(C) No. 8353/2022, heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. S.K. Goswami, learned counsel for the petitioner. Also heard Mr. H. Gupta, learned CGC appearing for

respondent no.1, Mr. P. Nayak, learned counsel for RMSA, representing respondent no.2, Ms. M. Barman, learned Govt. Advocate, representing respondent nos. 3 and 4 and Mr. S. Borthakur, learned counsel for respondent no.5.

3) For the sake of convenience, in this order the parties are referred to as per their respective status in W.P.(C) 2189/2023. It may be mentioned that the writ petitioner in W.P.(C) 8353/2022 is arrayed as respondent no.6 in W.P.(C) 2189/2023.

Pleading and prayer W.P.(C) No. 8353/2022:

4) The respondent no. 6 in W.P.(C) 2189/2023, namely, Bikash Sarma [petitioner in W.P.(C) 8353/2022] is projecting himself to be doing proprietorship business under the name of M/s. J.M.K. Enterprise. He being qualified, had participated in response to NIT dated 15.07.2022 issued by the Principal Adarsha Vidyalaya, Dalgaon (respondent no. 5) for supply of school furniture. The last date for submission of tender was 30.07.2022 and the bids were opened on 30.07.2022. Out of the 4 (four) bids submitted, the respondent no. 6 was held to be L-1 bidder. As no work order was issued, in response to RTI application, the respondent no. 6 was informed that the bids submitted by other three bidders were rejected as their brands were not approved by the PWD(B). It is projected that the specification of the furniture was modified by the Mission Director, RMSA (respondent no.2) by letter dated 10.06.2022. However, the respondent no. 5 had cancelled the tender process by notice dated 29.09.2022 and a fresh NIT dated 20.10.2022 was invited. The respondent no. 6 had participated in the tender process and when the bids were opened on 03.11.2022, he turned out to be the L-1 bidder, but no work order was issued. After making strenuous effort, the respondent no. 6 had received message

dated 14.12.2022 from the respondent no. 5 by WhatsApp, which was seen on 15.12.2022, requiring him to provide sample of school furniture on or before 19.12.2022. The respondent no. 6 had submitted a representation dated 19.12.2022 that samples should only be obtained from him and not from L-2 and L-3 bidders and some samples were provided by him. Apprehending that work order may be issued to other bidders, writ petition under Article 226 of the Constitution of India, being W.P.(C) 8353/2022 was filed on 21.12.2022, amongst others, with a prayer to direct the respondent authorities to issue work order in favour of the respondent no. 6.

Pleading and prayer W.P.(C) No. 2189/2023:

5) Apart from referring to the tendering process, already referred to in the foregoing paragraph, it was pleased that the respondent no. 6 [i.e. petitioner in W.P.(C) 8353/2022] was the L-1 bidder and as per letter dated 14.12.2022, issued by the respondent no.5, the petitioner had supplied samples of furniture on 19.12.2022. The inspection team had inspected the furniture samples provided by the petitioner and respondent no. 6 and as per the inspection report, the quality of sample provided by the petitioner was found to be of superior quality and that the samples provide by the respondent no. 6 were incomplete, defective and not as per specification. However, the respondent no. 5 had issued another letter dated 11.04.2023, asking the petitioner to attend on 12.04.2023 for fresh inspection/ assessment and on the basis of inspection/ assessment carried out on 12.04.2023, work order dated 19.04.2023 was issued to the respondent no. 6. The said work order has been assailed in this writ petition filed under Article 226 of the Constitution of India.

Submission made by the learned senior counsel for the respondent no. 6 [i.e.

petitioner in W.P.(C) 8353/2022]:

6) The learned senior counsel for the respondent no. 6 has submitted that by order dated 22.12.2022, passed by this Court in W.P.(C) 8353/2022, this Court had directed that till the respondent no. 4 does not disclose about the status of the various bidders or till returnable date, whichever is earlier, no work order shall be issued by the respondent no. 5 and it was also provided that if the respondent no. 5 declares the status of the various bidders, it would be open to them to proceed with the procurement in terms of NIT dated 20.10.2022 and that the respondent no. 5 would inform the bidders about the status of their bid. It was submitted that thereafter, by order dated 31.03.2023, passed in W.P.(C) 8353/2022, this Court had opined that the respondent no. 6 be afforded with another opportunity to place the sample of the supplies which he proposes to make within a period of 10 (ten) days from the date of the order and there will be fresh inspection/ assessment of the supply made and a decision would be taken and it was further ordered that the sample which were supplied earlier by the respondent no. 6 are required to be returned to the respondent no. 6, if not already returned. Accordingly, it was submitted that as the inspecting team found that the sample supplied by the respondent no. 6 meet the criteria, work order dated 19.04.2023 was issued in favour of the respondent no. 6 and that before the interim order dated 03.05.2023 was passed in W.P.(C) 2189/2023, the respondent no. 6 had supplied a major part of the furniture, except (i) 100 desk and benches, (ii) table and chair for the Principal, (iii) table and chairs for the library, and (iv) table and chairs for the laboratory.

7) Thus, it was submitted that as major supplies has already been made by the respondent no. 6, nothing remained to be adjudicated in W.P.(C)

8353/2023. Hence, it was submitted that this writ petition be closed having been rendered infructuous.

Submission made by the learned senior counsel for the petitioner in W.P.(C) 2189/2023:

8) It was submitted that W.P.(C) 8353/2022 was filed by Bikash Sarma, doing proprietorial business under the name and style of M/s. J.M.K. Enterprise. The said firm is arrayed as respondent no.6 in W.P.(C) 2189/2023. The learned senior counsel for the petitioner had referred to Annexure- 8 of W.P. (C) 2189/2023, and had submitted that on 19.12.2022, the petitioner, respondent no. 6 as well as Inspection Team members had jointly signed the "*Physical inspection team report on furniture sample for Adarsha Vidyalaya, Dalgaon provided by M.J. Enterprise and J.M.K. Enterprises*". Therefore, the respondent no. 6 was aware about the name of the petitioner, being the other bidder in the tendering process. However, W.P.(C) 8353/2022 was filed on 21.12.2022, but the petitioner was not arrayed as a respondent. Accordingly, it was submitted that W.P.(C) 8353/2022 is liable to be dismissed for non-joinder of proper and necessary parties.

9) It was further submitted that the respondent no. 6 had not disclosed before this Court regarding the inspection carried out on 19.12.2022 of the samples furnished by the petitioner. However, on a projection that insufficient time was granted to them to furnish samples, this Court vide order dated 31.03.2023, granted one more opportunity to the respondent no. 6 to place the samples of the supplies which he proposes to make within a period of 10 (ten) days and further directed that a fresh inspection/ assessment of the samples be made and a decision would be taken. Nonetheless, the order dated 31.03.2023, also contained a safeguard that such a decision should be taken

independently and the outcome be informed to the Court by the next date fixed. It was submitted that this time, the Principal, Adarsha Vidyalaya, Dalgaon (respondent no. 5), by a letter dated 11.04.2023, directed the petitioner about the proposed inspection/ assessment of furniture on 12.04.2023 at 11.00 am. Therefore, the petitioner, not being informed about the order dated 31.03.2023, by letter dated 12.04.2023, expressed surprise on fresh inspection and also demanded information why fresh inspection was necessary regarding samples which had already been inspected. However, no reply was given to the petitioner and thereafter, the respondent no. 5 had issued the supply order dated 19.04.2023 in favour of the respondent no. 6 without obtaining prior leave of the Court. It was submitted that without being aware of the previous writ petition i.e. W.P.(C) 8353/2022, the present writ petition was filed on 21.04.2023.

Submissions on behalf of respondent no. 5:

10) The learned counsel for the respondent no. 5 had submitted that there is urgency in the disposal of this writ petition, as only a part of the supplies is yet to be completed. It was submitted that the tender was for supply of school furniture, which is essential for the smooth operation of the school. Hence, it is submitted that because of overwhelming public interest, the writ petitions are liable to be expeditiously disposed of. It was also submitted that as per his instructions, there is nothing adverse against the furniture supplied by the respondent no. 6.

Reasons and decision:

11) It may be mentioned that by letter dated 14.12.2022, the Circle Officer-cum- Convenor, Adarsha Vidyalaya, Dalgaon, which was counter-signed by the respondent no. 5 i.e. Principal of the school, the petitioner and the

respondent no.6 were asked to provide the samples of furniture on 19.12.2022.

12) In the proceeding of W.P.(C) 8353/2022, the writ petitioner is party arrayed as respondent no. 6 in W.P.(C) 2189/2023. But in the said W.P.(C) 8353/2022, the petitioner in W.P.(C) 2189/2023 was not arrayed as one of the respondents. Neither the respondent no. 6 [petitioner in W.P.(C) 8353/2022], nor the respondents had produced the copy of "physical inspection team report" dated 19.12.2022. The said document was annexed as Annexure-8 in W.P.(C) 2189/2023, and it is seen that it contains illegible initial signatures of (i) The Circle Officer-cum- Convenor; (ii) S.M.D.C. Member; (iii) S.M.D.C. Member; (iv) DPE, SSA, Darrang; (v) representative of J.M.K. i.e. short initials of "J.M.K. Enterprises" (i.e. firm of respondent no.6 Bikash Sarma); (vi) illegible signature without disclosing any designation; (vii) representative of petitioner M.J. Enterprises; (viii) Makhan Borah, Principal, A.V., Dalgaon. The respondent no. 6 had filed W.P.(C) No. 8353/2022 on 21.12.2022 and it is apparent that the respondent no.6 had withheld and/or suppressed the said inspection team report dated 19.12.2022. The petitioner had brought the said inspection team report dated 19.12.2022 to light by marking the said document as Annexure-8 to W.P.(C) 2189/2023, and the respondent no.5 had brought the same on record in WP(C) 8353/2023 in their affidavit-in-opposition.

13) Therefore, on 21.12.2022, when W.P.(C) 8353/2022 was moved by the respondent no. 6, this Court was presented with distorted facts by projecting that the petitioner was not given work order despite being lowest bidder, whereas, the correct state of facts was that on 19.12.2022, when inspection team had assessed the furniture sample furnished by the petitioner and respondent no. 6, all the samples produced by the petitioner, i.e. M/s. M.J. Enterprise were as per specification. However, out of 15 tendered items, the

respondent no. 6 had submitted samples of only 7 (seven) items and had not submitted samples for 8 items. Moreover, samples in respect of 1 item, i.e. sl. no.12 – Bed, was not as per specification and in respect of item sl. no. 10- almirah, was found with shelves not adjustable, and handle not properly fitted.

14) On 30.01.2023, the respondent no. 5 had filed an affidavit-in-opposition, wherein it was disclosed that the tender was opened on 03.11.2022 in the presence of the participants. The attendance sheet dated 03.11.2022 is available in the records produced by the respondent no. 5. As per the comparative statement, the respondent no. 6, who had quoted a total price of Rs.25,11,312/- (Rupees twenty five lakh eleven thousand three hundred and twelve only) was the lowest bidder and the petitioner, who had quoted total price of Rs.29,89,240/- (Rupees Twenty nine lakh eighty nine thousand two hundred forty only) was the L-2 bidder. Thereafter, a comparative statement was prepared and the respondent no. 5 submitted his report to the Addl. Deputy Commissioner, who had then put up the file before the Deputy Commissioner on 17.11.2022 for approval and issuance of work order to the respondent no. 6. Thereafter, the Deputy Commissioner, Darrang, passed an order to call for samples of furniture from L-1 and L-2 bidder and in the said regard, letter dated 14.12.2022 was issued to the respondent no. 6 and the petitioner to provide samples on 19.12.2022 and a Committee was formed with (a) Addl. Deputy Commissioner (Edu), (b) Circle Officer-cum-Convenor, SMDC, (c) District Project Officer, SSA, (d) respondent no. 5, (e) nominated two parent members of SMDC, (f) teacher member of the School, and (g) MLA representative. On 19.12.2022, inspection of samples was carried out and report dated 19.12.2022 (Annexure-A to said affidavit-in-opposition of respondent no. 5) was prepared. The contents of the said report is as follows:-

Sl. No.	List of items	M.J. Enterprise Quantity of sample / Finding	J.M.K. Enterprise Quantity of sample / Finding
1.	Desk cum Bench	1/ As per specification. Quality of powder quoting found properly in the item.	1/ Frame structure of Desk cum Bench are found as per specification but board not fitted properly with structure, powder coating not found in the sample.
2.	Desk for teacher/ Table for teacher/ ...	1/ Drawer are found properly fitted metal lock with hydraulic sliding chenal system in the drawer opening	1/ Frame structure of Desk for teacher is found without drawer, work top is not fitted properly in the sample, powder coated not found during our verification of samples.
3	Chair for teacher/chair for visitor	1/ As per specification, seat and back are hot pressed water resistant, commercial plywood upholstered with P.U. foam and fabric	Nil/ No sample provided
4	Computer table	1/ Dimension of table are found as per specification and proper load bearing capacity	Nil/ No sample provided
5	Computer chair	1/ The seat and back are injection moulded in polypropylene as per specification	Nil/ No sample provided
6	Laboratory table	1/ Dimension are proper as per specification and the top of the table is also as per specification	Nil/ No sample provided
7	Library reading table	2/ As per specification. The dimension of the table top and understructure found as per specification during our verification	1/ Top board is not fitted properly
8	Library reading chair	1/ As per specification, seat and back are hot pressed water resistant, commercial plywood upholstered with P.U. foam and fabric	Nil/ No sample provided
9	Storage for books	1/ As per specification, Dimension of the bookshelf is found as per	Nil/ No sample provided

		specification	
10	Almirah	1/ As per specification, Dimension of the almirah is found as per specification, 4 Nos. of shelves available with proper locking mechanism	Nil/ No sample provided
11	Staff table	1/ As per specification, Drawer are found properly fitted metal lock with hydraulic sliding chenal system in the drawer opening	Nil/ Staff table drawer not found during our verification
12	Bed	1/ Wooden bed available	Nil/ No sample provided
13	Principal's table	1/ As per specification, Drawer are found properly fitted metal lock with hydraulic sliding chenal system in the drawer opening	Nil/ No sample provided
14	Principal's chair	1/ As per specification, Mid back Non Revolving Chair with proper dimension	Nil/ No sample provided
15	Stool	1/ The seat assembly is circular type dia of 30 cm	1/ The seat assembly is circular type dia of 30 cm

15) Therefore, as per the inspection report dated 19.12.2022, the petitioner had produced better samples than the respondent no. 6 and had maintained the specifications. As per the note-sheet available in the record produced by the respondent no. 5, it appears that the photographs of the furniture samples were enclosed when the file was put up before the Circle Officer-Cum- Convenor, A.V., Dalgaon.

16) Therefore, by *ex parte* presentation of distorted facts, this Court by order dated 31.03.2023, passed in W.P.(C) 8353/2022, granted 10 further days time to the respondent no.6 to provide samples of furniture that was required to be supplied. At that time, the respondent no. 6 i.e. proprietor of

M/s. J.M.K. Enterprise had suppressed material facts from this Court that his samples that were produced on 19.12.2022, were inspected and found defective. Be it stated that the impression projected by the said W.P.(C) 8353/2022 was that despite the respondent no. 6 being the lowest bidder, another process was initiated vide notice dated 20.10.2022 for a fresh tender.

17) It is seen that in the notice dated 11.04.2023 [Annexure-9 to W.P.(C) 2189/2023], the respondent no. 5 did not put the petitioner to notice that the re-inspection of furniture was being done on the basis of order dated 31.03.2023, passed by this Court in W.P.(C) 8353/2022 and thus, it appears that in the re-inspection and/or re-assessment of furniture which was held on 12.04.2023, the samples of the petitioner and respondent no. 6 were all found as per specifications. However, without obtaining leave of the Court, the work order dated 19.04.2023 was issued by respondent no. 5 in favour of the respondent no. 6.

18) It would now be relevant to quote the order dated 31.03.2023, passed in W.P.(C) 8353/2022, which is as follows:-

“31-03-2023

Heard Shri S.K. Goswami, learned counsel for the petitioner. Also heard Shri S. Borthakur, learned counsel for the respondent No. 5, who is the Principal of the Adarshya Vidyalaya Dalgaon in the district of Darrang. The State respondents are represented by Shri CKS Baruah, learned counsel. Ms. A. Gayan, learned counsel is present for the Union of India; Shri B. Gogoi, learned counsel is for the respondent No. 2, the Rashtriya Madhyamik Shiksha Abhiyan.

The matter pertains to a tender process initiated vide an NIT dated 15.07.2022 for supply of school furnitures for the respondent No. 5, School. It is the case of the petitioner that in the first NIT though the bid of the petitioner was found to be L1 the same was cancelled whereafter another process was initiated vide a notice dated 20.10.2022. The case of the petitioner is that in the second process, the bid submitted by the petitioner has emerged as L1. However, there is a note by an authority recommending rejection of the bid of the petitioner on the ground that the supplies of the sample were of inferior quality.

The learned counsel for the petitioner submits that apart from the fact that very less time was granted for making the supplies of the sample, the recommendation is not on the basis of quality but certain lack of fittings which could not be done because of constraint in time.

On the other hand, Shri Barthakur, the learned counsel for the respondent No. 5 submits that the authorities who are competent to take the decisions are yet to take such decision and the matter is only at the stage of a recommendation by the Addl. Deputy Commissioner.

Be that as it may, this Court is of the opinion that the dispute may not be required to be adjudicated in view of the directions which is proposed to be passed.

This Court is of the opinion that the petitioner be afforded with another opportunity to place the sample of the supplies which he proposes to make within a period of 10 days from today and there will be a fresh inspection/assessment of the supply made and a decision would be taken.

It is needless to state that such decision be taken independently and fairly and the outcome may be informed to this Court by the next date fixed.

In view of the above, the petitioners may make the supply of the sample within the period stipulated above and the decision be taken thereof within a period of 2 (two) weeks thereafter.

The matter be listed for consideration on 03.05.2023.

The sample which were supplied earlier by the petitioner are required to be returned to the petitioner, if not already returned.

Interim order passed earlier to continue till the next date of listing.

sd/- (illegible)

(JUDGE)."

19) Ordinarily, the Court would be slow in interfering in matters relating to supply of school furniture as delay in procurement hampers public interest as the students are deprived of benefit of timely supply of furniture, which is essential for maintaining educational environment in the school concerned. But in this case, there has been suppression of material facts by the

respondent no. 6. In the proceeding of W.P.(C) 8353/2022, the respondent no. 6 had suppressed that the samples furnished by him was not only deficit, but also defective. The record produced by the respondent no. 5 does not reveal that on the receipt of letter dated 14.12.2022 [Annexure-VIII to W.P.(C) 8353/2022], the respondent no. 6 ever made a request to the respondent no. 5 to grant some additional day's time to submit samples. Nonetheless, vide letter dated 19.12.2022 [Annexure-IX to W.P.(C) 8353/2022], apart from mentioning that very short period of 3 (three) days time (including Sunday) was given to supply furniture, the only grievance expressed by the firm of respondent no. 6 was that as L-1 bidder, only he should have been asked to give samples and if he fails, then only L-2 and L-3 bidder should have been asked to provide samples.

20) In this case, the writ petitioner in W.P.(C) 8353/2022, (respondent no.6) had suppressed material facts and did not disclose the true state of affairs relating to inspection of sample furniture carried out on 19.12.2022 although the said writ petition was filed on 21.12.2022. Under such circumstances, the respondent no. 6 has become disentitled to any relief and the writ petition deserves to be dismissed on the ground of suppression of material facts, which had bearing in this case. In this regard, with profit, we may refer to the case of *G.M. Haryana Roadways v. Jai Bhagwan & Ors., (2008) 4 SCC 127*, the writ petition was dismissed with exemplary cost of Rs.1,00,000/- because in the "list of dates" filed with the Petition for Special Leave to Appeal, (SLP for short), fact that the first respondent had been reinstated in service or that his services had been regularized had not been disclosed, but in the prayer for interim relief, stay of the High Court's judgment thereby reinstating the first respondent was sought. Suppression of fact at the instance of State was viewed seriously and the SLP was dismissed with exemplary costs of Rs.1,00,000/- (Rupees one lakh only).

21) The following observation was made by the Supreme Court of India in the case of *Gajadhar Prasad v. Babu Bhakta Ratan*, (1973) 2 SCC 629: *AIR 1973 SC 2593*, which is extracted below:-

“17. Mr. J.N. Chatterji relied upon the following passage in Marudanavagam Pillai v. Manickavasakam Chettiar, AIR 1945 PC 67 at p. 70:

"If the respondent knew the true facts, if he purchased at what he knew was too low a figure based on an upset price accepted by the Court owing to his own initial misrepresentation and subsequent suppression of material facts, his conduct would amount to fraud on the Court as the learned subordinate judge points out."

22) In the case of *Udyami Evam Khadi Gramodyog Welfare Sanstha & Anr. v. State of U.P. & Ors.*, (2008) 1 SCC 560, the Supreme Court of India had observed as follows:-

“16. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries and Anr., (1980) 3 SCC 311, this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.”

23) In the case of *G. Narayanaswamy Reddy (Dead) by LRs & Anr. v. Govt. of Karnataka & Anr.*, (1991) 3 SCC 261, a 3- Judge Bench of the Supreme Court of India, had observed as follows:-

“Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the nondisclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Art. 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions.”

24) It would also be relevant to refer to the case of *S.P. Chengalvaraya Naidu Vs. Jagannath (Dead) & Ors., (1994) 1 SCC 1: AIR 1994 SC 853*, where the Supreme Court of India had observed as follows:-

“7. ... We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.”

25) Similarly, in the case of *K.D. Sharma v. Steel Authority of India Ltd., (2008) 12 SCC 481*, the Supreme Court of India had held as follows:-

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.”

26) It is reiterated at the cost of repetition that in this case, the inspection report dated 19.12.2022, where the respondent no. 6 and/or his representative was one of the signatory, was withheld from this Court. The only presumption that can legally be drawn is that had the said report been annexed to the writ petition i.e. W.P.(C) 8353/2022, the same would have been adverse to the respondent no. 6. Moreover, in the letter dated 19.12.2022, the respondent no. 6 never took the plea of wanting some more time to supply/furnish furniture samples, which was portrayed as if the respondent no. 6 was seeking some more time to supply furniture samples.

27) Thus, the Court is constrained to hold that the respondent no. 6 i.e. writ petitioner in W.P.(C) 8353/2022 by suppressing material fact i.e. inspection team report dated 19.12.2022, had played fraud upon the Court. Therefore, in light of the decisions referred to herein before, the respondent no.

6 has become disentitled to any relief in the said writ petition despite the projection that part supply of furniture has been made by the respondent no. 6. Accordingly, W.P.(C) 8353/2022, filed by the respondent no. 6 is dismissed.

28) In so far as W.P.(C) 2189/2023 is concerned, the petitioner is found disentitled to a direction upon the respondent authorities to allow the petitioner to make supply of furniture items to Adarsha Vidyalaya, Dalgaon because on the strength of the order dated 31.03.2022, passed by this Court in W.P.(C) 8353/2022, the respondent no. 6 had provided samples of furniture to be supplied, which were as per specification, moreover, the rates quoted by the respondent no. 6 was more competitive than that offered by the petitioner.

29) Nonetheless, as W.P.(C) 8353/2022 has been dismissed, the order dated 03.05.2023, passed by this Court in W.P.(C) No. 2189/2023 is made absolute by restraining the respondent no. 5 authority to accept any further furniture supply from the respondent no. 6, namely, J.M.K. Enterprises, proprietorial concern of Bikash Sarma pursuant to the work order no. AV/Dalgaon/Procurement/ 2023/291 dated 19.04.2023, issued by the Principal, Adarsha Vidyalaya, Dalgaon.

30) As the said work order was issued without conveying prior information to the Court, as directed by order dated 31.03.2023, passed in W.P. (C) 8353/2022, the said work order no. AV/Dalgaon/ Procurement/2023/291 dated 19.04.2023, issued by the Principal, Adarsha Vidyalaya, Dalgaon stands prospectively set aside and quashed, without affecting part supplies already made. The relief to the above extent is granted in W.P.(C) 2189/2023.

31) However, it is provided that it would be open to the respondent no. 5 to either call for a fresh tender and/or call for competitive rates from the bidders who had participated in the bidding process pursuant to NIT dated

15.07.2022 and/or by adopting any other transparent process for procurement and after carrying out inspection of the sample furniture to be supplied.

32) Therefore, in light of the discussions above, the Court hereby passes the following –

ORDER

- a. W.P.(C) 8353/2022, filed by the respondent no. 6 is dismissed.
- b. W.P.(C) 2189/2023 stands partly allowed by setting aside and quashing the work order no. AV/Dalgaon/ Procurement/2023/291 dated 19.04.2023, issued by the Principal, Adarsha Vidyalaya, Dalgaon.
- c. The order dated 03.05.2023, passed by this Court in W.P.(C) No. 2189/2023 is made absolute by restraining the respondent no. 5 authority to accept any supply from the respondent no. 6, namely, J.M.K. Enterprises, proprietorial concern of Bikash Sarma pursuant to the work order no. AV/Dalgaon/Procurement/ 2023/291 dated 19.04.2023, issued by the Principal, Adarsha Vidyalaya, Dalgaon.
- d. In respect of the balance procurement of furniture, that remains to be supplied in respect of work order no. AV/Dalgaon/ Procurement/ 2023/291 dated 19.04.2023, issued by the Principal, Adarsha Vidyalaya, Dalgaon, it would be open to the respondent no. 5 to either call for a fresh tender and/or call for competitive rates from the bidders who had participated in the bidding process pursuant to NIT dated 15.07.2022 and/or by adopting any other transparent process for procurement and after carrying out inspection of the sample furniture to be supplied.
- e. For suppression of facts, the Court is inclined to impose a cost of

Rs.25,000/- (Rupees Twenty five thousand only) on the writ petitioner in W.P.(C) 8353/2022, namely, Bikash Sarma, proprietor of M/s. J.M.K. Enterprises, who is directed to deposit the same before the Registry of the Court within 30 days. On such deposit being made, the said money shall be made over to the Gauhati High Court Bar Association Benevolent Fund.

f. In case the writ petitioner in W.P.(C) 8353/2022 fails to make such deposit within the time allowed, it would be open to the Gauhati High Court Bar Association to enforce realization of cost in accordance with the Gauhati High Court Rules. Therefore, let a copy of this order be sent by the Registry to the Gauhati High Court Bar Association for information.

33) These two writ petitions stand disposed of on terms as indicated herein before.

JUDGE

Comparing Assistant